



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

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Case #: ZBA 2016-147
Site: 500 Medford Street
Date of Decision: April 5, 2017
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: April 6, 2017

ZBA DECISION

Applicant Name:	Himgiri Realty Trust
Applicant Address:	500 Medford Street, Somerville, MA 02145
Property Owner Name:	Himgiri Realty Trust
Property Owner Address:	500 Medford Street, Somerville, MA 02145
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

<u>Legal Notice:</u>	Applicant/Owner, Himgiri Realty Trust, seeks a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment, a Special Permit under SZO §7.11.1.c to establish four residential dwelling units, and a Variance under SZO §5.5 and Article 9 for off-street parking spaces.
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<u>Zoning District/Ward:</u>	NB zone/Ward 5
<u>Zoning Approval Sought:</u>	§7.11.10.2.1.a, §7.11.1.c, §5.5 & Article 9
<u>Date of Application:</u>	December 5, 2017
<u>Date(s) of Public Hearing:</u>	2/15, 3/1, 3/15 & 4/5/17
<u>Date of Decision:</u>	April 5, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2016-147 was opened before the Zoning Board of Appeals at Somerville City Hall on February 15, 2017. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The proposal is to construct a two-story addition on the existing brick structure and a three-story addition in the rear of the existing structure to establish four residential dwelling units and a fast order food establishment in the vacant storefront. The storefront space is also proposed to be added upon as part of the construction. The two commercial units are proposed to occupy the first floor and four residential dwelling units are proposed on the second and third floor (two on each floor). Improvements are proposed in the rear of the locus which includes trees, shrubs, perennials/ground cover, and pavers to create a terraced landscaped area. A total of sixteen off-street parking spaces are required; however, five are proposed.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.1.c) and FINDINGS FOR SPECIAL PERMIT with DESIGN REVIEW (SZO §7.11.10.2.1.a):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. **Information Supplied:**

The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. **Compliance with Standards:** *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

Nature of Application: Pursuant to §7.11.10.2.1.a a fast order food establishment of less than 2,500 square feet of gross floor area in the Neighborhood Business zoning district requires a Special Permit with Design Review. Also, pursuant to §7.11.1.c four residential dwelling units in the Neighborhood Business zoning district requires a Special Permit.

Pursuant to SZO §6.1.4 "all developments within the NB district that require a special permit with design review or special permit with site plan review should give preference to locating on-site, off-street parking at the rear of the lot, behind the building or below street level, providing vehicular access from either a side street or alley where possible." The proposal does provide five off-street parking spaces at the rear of the locus that are accessed from Trull Street.

3. **Consistency with Purposes:** *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the district, which is, "to establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods."



4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

Surrounding Neighborhood: The surrounding neighborhood is Magoun Square. There are a mix of fast food establishments, restaurants, personal service establishments, retail, and convenience stores in the neighborhood. This particular block of Medford Street contains one story commercial structures and two gable roof residential structures. Directly across the street of the locus is a three-story mixed use structure. The predominant building material in Magoun square is masonry.

Impacts of Proposal (Design and Compatibility): Special Permits with Design Review and Special Permit with Site Plan Review applications must meet the design guidelines under SZO §5.1.5/5.2.4.

The proposal maintains a strong building presence along the primary street edge, has recessed entrances from the rest of the primary street elevation, uses a three-window rhythm and balconies in the proposed addition that works well with the rhythm of the existing façade, steps back the proposed addition, and maintains a flat roof as is similar with other structures in Magoun Square.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

Impacts of Proposal (Environmental): The Board does not anticipate the proposed use to create adverse environmental impacts.

6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

Impacts of Proposal (Circulation): The proposal is to locate three off-street parking spaces on the locus that will be accessed via Trull Street across an easement on 494 Medford Street and two off-street parking spaces that will be located on 496 Medford Street, which the Board recommends a condition that the Applicant secure an easement for such spaces or merge the two lots. The Board finds that the proposal of four residential units and two commercial units will not impact circulation patterns for motor vehicles or pedestrians and will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

6. Fast food establishments: *In special permit applications for fast-order, take-out or automobile oriented food service establishments, there shall be establishment of a need for such a facility in the neighborhood or in the City, and impacts on traffic circulation, parking and visual, physical, or historical characteristics of the particular location shall not be detrimental.*

The proposed fast food establishment will not have any seats and expects to have approximately six employees. It will be take-out and delivery only. Black channel lettering is proposed on the sign band above the restaurant entrance. There are four metered parking spaces in front of the locus on Medford Street.

7. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The proposal of four residential dwelling units will not trigger a requirement for inclusionary housing units or a payment to the Affordable Housing Trust Fund.

8. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods,*



transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs.

Magoun Square is labeled on the SomerVision map as an area to enhance. The locus has been illustrated in the Lowell Street Station Area Plan (September 2014), which was completed with significant input from local stakeholders. The plan describes the neighborhood's future regarding streetscape improvements, the local economy, civic space upgrades, supporting transit oriented infill development, and adopting a smart parking policy. One of the major objectives of the station area plan is to guide development around the future Lowell Street Station to be consistent with the shared community vision for the future.

The community supported a conceptual design and zoning district for the future of Magoun Square. The design and zoning recommended the aggregation of parcels on Medford Street between Trull Street and Lowell Street, of which the locus is a part of, and constructing one mixed use structure with three to four stories and underground parking. Although the plan called for an aggregation of parcels on this whole block, the Applicant has submitted an illustration that shows his proposal could exist as a first phase of implementing the community's vision.

The recommended parking policy called out in the plan was 1.0 space per new residential unit, regardless of bedroom count, with a 0.5 spaces reduction for any property within 1/4 mile of an operational rapid-transit station. It further recommends the elimination of off-street parking requirements for first-floor retail uses. If the recommended parking policy existed today in the SZO and the Lowell Street Station was operational, the required number of parking spaces would be two as the ground floor retail uses would require zero and the four residential units would only require two since the locus is within 1/4 mile of the proposed Lowell Street Station. The Board finds that the proposed plan does not meet the expectations illustrated by the community in the Lowell Street Station Area Plan.

FINDINGS FOR VARIANCE

A Variance (§5.5) is sought to reduce the number of required parking spaces by eleven. The proposed development requires

USE	PROPOSAL	REQUIREMENT		
Retail	406 sf expansion to retail	1 space per 500 sf	1	
Fast Food*	6 employees	0.75 spaces per employee	4.5	7
	130 sf of waiting area	1 space per 50 sf of waiting area	2.6	
Residential	4 three-bedroom units	2 spaces per unit with 3 or more bedrooms	8	
TOTAL REQUIRED SPACES				16

** In 2013 the locus was granted a Special Permit with Design Review under SZO §7.11.10.2.1.a to establish a fast order food establishment and a Special Permit under §9.13 for 2 spaces of parking relief. This permit was never exercised and has since expired.*

In order to grant a variance the Board must make certain findings and determinations as outlined in §5.5.3 of the SZO.

1. *There are "special circumstances relating to soil conditions, shape or topography of land or structures which especially affect such land or structures but not affecting generally the zoning district in which it is located, causing substantial hardship, financial or otherwise."*

Applicant's response: Special circumstances affecting the land, i.e. the shape of the site, which does not allow for any parking on the property. Underground parking would not be "economically feasible" for this project. Further, the structure is landlocked, which is an unusual circumstance that does not affect other properties.



The Board's response: The existing structure is positioned on the front of the locus and the shape of the locus is deep and narrow, which presents a hardship for providing off-street parking on-site.

2. *"The variance requested is the minimum variance that will grant reasonable relief to the owner, and is necessary for a reasonable use of the building or land."*

Applicant's response: The variance is the minimum approval necessary to grant reasonable relief to the applicant and results in a practical use of the location as there is no parking on site, but it is a short distance to public transportation, the new proposed Green Line will be steps away, the bike path is also in close proximity. These amenities will attract persons who do not own vehicles.

The Board's response: Considering the location of the locus within Magoun Square and within walking distance to a future rapid transit station, four-dwelling units above two storefronts is reasonable for a locus this size in a neighborhood business district. The Board finds that the variance requested is the minimum variance that will grant reasonable relief to the owner and would be necessary for a reasonable use of the building and land.

3. *"The granting of the variance would be in harmony with the general purpose and intent of this Ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare."*

Applicant's response: The granting of the variance would be in harmony with the Somerville Zoning Ordinance and not injurious to the neighborhood or otherwise detrimental to the public welfare, as this site will attract residents who do not own motor vehicles.

The Board's response: The proposal would be in harmony with the general purpose and intent of this Ordinance and the lack of any parking spaces on the locus would not be injurious to the neighborhood.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit and a Special Permit with Design Review. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Variance. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes												
1	Approval is for the construction of four dwelling units, a fast order food establishment, and the expansion of the existing liquor store. This approval is based upon the following application materials and the plans submitted by the Applicant:	CO / BP	ISD/PIng.													
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>December 5, 2016</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>June 26, 2015</td><td>Existing conditions plan</td></tr><tr><td>December 1, 2016</td><td>Plans submitted to OSPCD (A-000, A-020, EX-100, A-100, A-300, AV-0, AV-1, and AV-3)</td></tr><tr><td>March 15, 2017</td><td>Modified plans submitted to OSPCD (A-020 and AV-3)</td></tr><tr><td>April 5, 2017</td><td>Illustrative Landscape Plan</td></tr></table>				Date (Stamp Date)	Submission	December 5, 2016	Initial application submitted to the City Clerk's Office	June 26, 2015	Existing conditions plan	December 1, 2016	Plans submitted to OSPCD (A-000, A-020, EX-100, A-100, A-300, AV-0, AV-1, and AV-3)	March 15, 2017	Modified plans submitted to OSPCD (A-020 and AV-3)	April 5, 2017	Illustrative Landscape Plan
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	April 5, 2017				Illustrative Landscape Plan											
Any changes to the approved (site plan or elevations/use) that are not <i>de minimis</i> must receive SPGA approval.																
Pre-Construction																
2	The Applicant shall complete the Site Plan Review Checklist and supply the information to the Engineering Office. The plans must comply with the City's Stormwater Management Policy.	BP	Eng.													

3	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	CO	Eng.	
4	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	Eng.	
5	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng.	
Construction Impacts				
6	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.	
7	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
8	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Design				
9	Applicant shall provide final material samples for siding, trim, windows, and doors (to the Design Review Committee for review and comment and) to Planning Staff for review and approval prior to construction.	BP	Plng.	
Site				
10	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
11	The Applicant shall submit a detailed landscape plan for Planning Staff review and approval.	BP	Plng.	
12	Any new electric, telephone, cable TV and other such lines and equipment from the street shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	



13	The Applicant shall install a six foot high stockade fence behind the two spaces on 496 Medford Street.	CO	Plng./ISD	
14	Applicant will supply a bicycle shed in the rear of a design to be reviewed and approved by the Planning Staff.	CO	Plng.	
Traffic & Parking				
15	In order to ensure that the occupants of the proposed redevelopment has access to five off-street parking spaces, the Applicant shall either: 1) file an easement to give 500 Medford Street occupants the perpetual right to have access to the two parking spaces on 496 Medford Street; or 2) the Applicant submit an Application to merge the two lots to give 500 Medford Street occupants the perpetual right to have access to the two parking spaces on 496 Medford Street.	BP	Plng. / ISD	
Miscellaneous				
16	The Applicant shall provide three off-site spaces to be available to tenants of the locus for a maximum of five years unless the Lowell Street Green Line Station opens sooner.	CO	Plng./ISD	
17	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
18	Prior to receiving a building permit, the applicant will sign a covenant agreeing to provide \$2.40 per square foot of total development on the site to the City of Somerville as a payment towards the City's contribution to the Green Line Extension. The covenant shall include the following: 1) The applicant shall make payment with a portion to be paid prior to the first unit being occupied and the final payment to be paid prior to the last unit being occupied - the portions shall be delineated in the covenant; 2) The payment shall be equal to \$2.40 per net square foot, exclusive of garage and storage areas, as defined in the zoning ordinance; 3) If, prior to making the payment, the City establishes a formal policy for developer payments to the Green Line Extension, and said policy includes exceptions or reductions in the payments, these exceptions and reductions will apply to this project as well; 4) The funds may only be used to pay for the Green Line Extension project.	BP	Plng.	
Public Safety				
19	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
20	Notification must be made, within the time period required under applicable regulations, to the Massachusetts Department of Environmental Protection (DEP) if there is any release of oil, hazardous materials, or regulated hazardous substances at the site. The City's OSE office, Fire Department and the Board of Health shall also be notified.	At time of release	OSE/FP/B OH	



21	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Signage				
22	Signage will be limited in size and location to that shown in the elevation diagrams and final designs shall be submitted to Planning Staff for review and approval.	CO/Cont.	Plng.	
Final Sign-Off				
23	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Josh Safdie

Attest, by the Administrative Assistant:

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

